Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1758

ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS,
Petitioners,

vs.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO *et al.*, and AMERICAN AIRLINES, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

The Association of Professional Flight Attendants petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

Opinions Below.

The opinion of the court of appeals (App. A, *infra*) is reported in unofficial reports at 17 F.E.P. 24 (7th Cir. 1978). The opinion has not yet been reported in official reports.

Jurisdiction.

The judgment of the court of appeals was entered on March 14, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented for Review.

Was the District Court's approval of a settlement agreement awarding retroactive seniority to flight attendants who had been formerly terminated by American Airlines an abuse of the Court's discretion for the following reasons:

(1) There was no evidence in the record indicating that the seniority system of American Airlines was not a bona fide seniority system.

(2) The Court did not require the Plaintiffs to demonstrate that they had complied with the timeliness requirements established by *United Airlines v. Evans,* 431 U.S. 553 (1977).

(3) The Court did not require Plaintiffs to produce concrete evidence regarding the impact of the settlement upon incumbent flight attendants.

(4) The Court did not require Plaintiffs to demonstrate that they would have been working during the period for which they are receiving retroactive seniority *but for* the termination by American Airlines.

Statutes Involved.

The relevant provisions of Title VII of the Civil Rights Act of 1964, as amended (78 STAT. 253, 42 U.S.C. Sections 2000e *et seq.*), are as follows:

> Section 703(h) (42 U.S.C. Section 2000e-2 (h)).

> Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the results of an intention to discriminate because of race, color, religion, sex, or national origin . . .
>
> Section 706(d), 42 U.S.C. Section 2000-5(d) (1970).
>
> A charge under subsection (a) shall be filed within 90 days after the alleged unlawful employment practice occur . . .

Statement of the Case.

A. The District Court Proceedings.

The original suit in this matter was filed in the District Court in 1970 by the Airline Stewards and Stewardesses Association, the predecessor of Petitioner APFA as the exclusive bargaining representative for flight attendants employed by American Airlines. The suit alleged that the employer had engaged in sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964, as amended, by terminating flight attendants who became pregnant.

Upon appeal of a settlement, the Seventh Circuit Court of Appeals remanded the case for trial. (*Airline Stewards and Stewardesses Association, Local 550 v. American Airlines, Inc.*, 490 F.2d 636 (7th Cir. 1973), cert. denied sub nom. *Airline Stewards and Stewardesses Association, Local 550 v. Zipes*, 416 U.S. 993 (1974).

Subsequent to remand, a settlement was reached between the Plaintiff class and American Airlines. Prior to the hearing in which court approval for the settlement was sought, the Association of Professional Flight Attendants (hereafter referred to as APFA), intervened in order to protect the interests of the incumbent flight attendants.

APFA posed no objection to the back pay settlement nor to the reinstatement of the Plaintiff class members. The sole objection raised by APFA was directed against the award of retroactive seniority to the returning class members.

More specifically, APFA objected to Section V B of the settlement agreement which provided that class members would be awarded retroactive occupational seniority. The basis of APFA's objection was that the award of retroactive occupational seniority would have the effect of depriving incumbent employees of rights given by collective bargaining agreement in such areas as the order of layoff and re-hire, promotional opportunities, and the choice of flights and home bases.

On October 3, 1977, a hearing was held by the District Court regarding APFA's objection to the settlement agreement. At that time, the claim process by the class members was not yet complete. The court did not yet know exactly how many class members desired to return to employment with American Airlines. Similarly, because the Plaintiffs presented no evidence regarding which bases or which flights would be assigned to the returning class members, the court was presented with no evidence regarding the impact of the settlement upon the presently employed flight attendants.

However, the Court accepted a representation by Counsel for the Plaintiffs that no incumbent flight attendant would lose his or her job as a result of the settlement. Based upon this representation, the Court approved the settlement agreement and overruled APFA's objection.

B. The Decision of the Court of Appeals.

The court of appeals affirmed the district court's approval of the settlement agreement. (App. A, *infra.*) The court of appeals held that review of the district court's actions should be judged "on the basis of legal principles regulating judicial review of settlement agreements" rather than on the basis of Title VII law.

Applying this principle, the Court rejected APFA's contention that the Court should have required Plaintiffs to demonstrate compliance with the timeliness requirements of *United Airlines, Inc. v. Evans, supra,* or that Plaintiffs should have demonstrated compliance with the conditions precedent for the award of retroactive seniority, as required by *International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324 (1977).

The Court also held that the district court was not obligated to require precise information with respect to the changes in the working life of incumbent flight attendants which would result from the settlement.

REASONS FOR GRANTING THE WRIT.

The decision of the court of appeals constitutes a serious departure from the established body of Title VII law which safeguards the seniority rights of employees innocent of any wrongdoing. In evaluating the actions of the district court in terms of the principles controlling settlement agreements, rather than using the principles of Title VII law, the court of appeals has deprived the presently employed flight attendants of American Airlines rights guaranteed by decisions of this Court.

Moreover, the district court's approval of the settlement agreement and the court of appeals affirmance raises the important question of whether the established limitations upon recovery in Title VII actions can be ignored when a case is resolved by settlement rather than by full litigation.

1. In *United Airlines, Inc. v. Evans,* 431 U.S. 553 (1977) this Court fashioned the following rule regarding the right to obtain relief based upon an untimely Title VII charge:

> "A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed."

The Plaintiff class includes flight attendants terminated since July 2, 1965. Yet, the charge which was the basis for the original lawsuit in this matter was filed in 1970. In using the principles governing settlement agreements, rather than Title VII law, the court of appeals gutted the *Evans* rule. Since the district court did not require evidence about which members

of the class were entitled to relief under the Evans rule, the effect of the Court of Appeals decision is to allow class members to receive an award of retroactive seniority despite the fact that their claims may be barred by the *Evans* rule.

Settlement of a Title VII action has a different impact than the ordinary settlement. The settlement of this case affects the employment rights of numerous flight attendants presently employed by American Airlines. They have different and competing interests as compared with the returning class members.

Consequently, the failure of the Court of Appeals to use Title VII law, including the *Evans* rule, deprives working employees of the protection which is afforded them by the decisions of this Court.

This defect in the court of appeals decision is illustrated by the court's handling of the issues raised by this Court's decision in *International Brotherhood of Teamsters v. U.S.,* 431 U.S. 324 (1977).

In the *Teamsters* case, this Court held that when fashioning a remedy which will impact upon a bona fide seniority system within the meaning of Section 703(h) of the Civil Rights of Act of 1964, as amended, a trial court must identify which employees were victims of discrimination and, further, the Court must adjust the remedial interest of discriminatees and the legitimate expectations of employees innocent of any wrongdoing.

In the instant case, the only evidence regarding the seniority system presented to the district court at the settlement hearing was the affidavit of Colleen Brenner filed on behalf of APFA. (App. B, *infra.*) This affidavit indicates that the alleged discriminatory prac-

tices which were the basis for Plaintiffs' claims had been eliminated from the seniority system in 1970.

Thus, the unrebutted evidence before the district court showed that the remedy being awarded the Plaintiff class members occurred in the face of a bona fide seniority system, contrary to the rule established in the *Teamsters* case. (See, *e.g., Southbridge Plastics Division v. Local 759 International Union of Rubber Workers*, 565 F.2d 913 (5th Cir. 1978).)

Moreover, the award of retroactive seniority violates the established principle that the recipient of such a remedy must demonstrate that he or she suffered or potentially suffered discrimination.

In the *Teamsters* case, *supra,* the Supreme Court reviewed the circumstances under which an award of retroactive seniority can be made. The following portion of the Supreme Court's decision is particularly relevant for the instant case:

> "A nonapplicant must show that he was a potential victim of unlawful discrimination. Because he is necessarily claiming that he was deterred from applying for the job by the employer's discriminatory practices, his is the not always easy burden of proving that he would have applied for the job had it not been for those practices." (52 L.Ed.2d 396, 435.) (Emphasis supplied.)

The instant case does not involve "nonapplicants" for flight attendant's jobs. However, this case involves the analogous situation of Plaintiffs who claim that they would have been working *but for* the alleged discriminatory discharge.

APFA respectfully submits that, on the basis of the *Teamsters* decision the district court was obligated to determine whether, in fact, the Plaintiffs would have been working during the years between pregnancy and the settlement of this lawsuit.

Without any showing that a class member tried to work during those years, it can only be assumed that the class member was content to be a housewife caring for her child. Such an inference could be rebutted by such evidence as a showing that the Plaintiff applied for jobs at other airlines, or attempted to return to work at American Airlines.

However, since the court did not require such a showing, it is quite likely that many Plaintiffs have received a windfall of a retroactive seniority award for years during which those Plaintiffs would not have been working, even if they had not been terminated. Under the *Teamsters* decision, such a windfall is forbidden.

2. This Court has acknowledged the crucial role that seniority plays in the economic employment system of this country. *Franks v. Bowman Transportation Company*, 424 U.S. 747, 766 (1976).

With respect to flight attendants, seniority is still more determinative of employment rights than in other industries in the economy. Every aspect of a flight attendant's job, including work schedules, home bases, vacations and layoff are arranged on the basis of seniority. The decision of the court of appeals does not only affect the employment of incumbent flight attendants of American Airlines. Rather, by approving the award of retroactive seniority without fulfilling the requirements of Title VII law and without requiring

information regarding the precise impact of the settlement in American Airlines' seniority system, the decision of the court of appeals threatens the principles established to strike the delicate balance between alleged discriminatees and working employees innocent of any wrongdoing.

Conclusion.

The Petition for a Writ of Certiorari should be granted.

DATED: June 9, 1978.

Respectfully submitted,

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LEVY, KOSZDIN, GOLDSCHMID & SROLOFF,
A Professional Corporation,
Attorneys for Petitioners.

APPENDIX A.

Opinion of the Court of Appeals.

In the United States Court of Appeals, for the Seventh Circuit.

Airline Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO et al., Plaintiffs-Appellees, v. American Airlines, Inc., Defendant-Appellee, and Association of Professional Flight Attendants, Intervenor-Appellant. No. 77-2098.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 70 C 2069—Frank J. McGarr, *Judge*.

ARGUED JANUARY 26, 1978 — DECIDED MARCH 14, 1978.

Before FAIRCHILD, *Chief Circuit Judge*, PELL and SPRECHER,* *Circuit Judges*.

PER CURIAM. The issue in this case is whether the district court abused its discretion by approving the settlement of a case under Title VII of the Civil Rights Act of 1964[1] without litigating the merits of the plaintiffs' claims and by not requiring a full evidentiary hearing on the effect of the settlement on the interests of the defendant's incumbent employees.

I

The plaintiffs in this case are a certified class composed of all female persons employed as flight cabin attendants whose employment with the defendant,

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*Although Judge Sprecher heard oral argument, he later disqualified himself from any further consideration of this case.

[1]78 Stat. 253. Title VII, as amended, is codified in 42 U.S.C. § 2000e *et seq*.

American Airlines, was terminated due to their having children on or after July 2, 1965. The intervenor, the Association of Professional Flight Attendants (APFA), is the exclusive bargaining agent for those attendants presently employed by American Airlines.

This suit was filed in 1970 in response to the defendant airline's policy of terminating stewardesses who became pregnant or adopted children and not allowing women with children to work as stewardesses. The suit[2] was brought by the Air Line Stewards and Stewardesses Association (ALSSA), the intervenor's predecessor as the bargaining representative of defendant's flight cabin attendants. The ALSSA entered into a settlement agreement with defendant which provided neither back pay nor retroactive seniority to those attendants who had been discharged under defendant's policy. That agreement was approved by the district court, but reversed by this court. *Air Line Stewards & Stewardesses Ass'n, Local 550 v. American Airlines, Inc.*, 490 F.2d 636 (7th Cir. 1973), *cert. denied sub nom. Air Line Stewards & Stewardesses Ass'n, Local 550 v. Zipes*, 416 U.S. 993 (1974).

On remand, after discovery and extensive briefing, the district court granted plaintiffs' motion for summary judgment. Defendant appealed that judgment to this court,[3] but during the briefing for that appeal, a settle-

[2]This suit was not the first one filed in response to defendant's policy of terminating stewardesses who became mothers. In 1967, Bernice Hillgruber filed a charge with the Equal Employment Opportunity Commission. Two years later, she filed a class action in California. In October 1969, Bonnie Pulskamp and others also filed EEOC charges against defendant.

[3]That appeal was originally filed jointly with Trans World Airlines in appeal number 77-1325 which was argued the same day as this appeal but is still pending. TWA has continued its appeal and American has remained in the appeal pending the resolution of the settlement issue. In light of our disposition

ment was reached. The settlement provides, *inter alia*, for the payment of cash, the restoration of accrued company seniority and provision for the court to decide whether occupational seniority[4] was appropriate if the APFA did not agree to a full restoration of that latter type of seniority.

The APFA filed a motion to intervene and requested a hearing on its objections to the settlement. The district court recognized that "for a complete resolution of the issues that arise out of this proposed settlement, that the Union should have a voice concerning it" and therefore, the court granted APFA's motion and conducted a hearing on the issues raised (Tr. at 2).

At the hearing, the intervenor declined to present any evidence, but instead argued orally on behalf of the incumbent employees' rights.[5] Intervenor's only

of this case, we assume that American will remove itself from that appeal.

We might note that the procedures that led to the approval of this settlement by the district court were somewhat unusual. While the briefs were being written for the appeal in 77-1325, American Airlines and the plaintiff class reached a tentative settlement agreement. Since TWA was proceeding on with its appeal, there was no need to seek a halt to the appeal while the district court evaluated the settlement. Thus, plaintiffs and American filed the settlement agreement with the district court. It held a hearing and approved the settlement during the same time that the appeal in 77-1325 was proceeding in this court. We believe that the parties acted appropriately to guarantee the interests of all concerned with the settlement.

[4]None of the parties in this appeal explained very fully the difference between the two types of seniority, especially the use made of company seniority. Intervenor listed the following as the benefits controlled under the collective bargaining agreement by length of occupational seniority: choice of flight, choice of status, promotional opportunities and rate of pay. Thus, it is clear that occupational seniority is an important part of the settlement agreement both for the returning and the incumbent flight attendants.

[5]Some of the details of the hearing are described in part III of this opinion *infra*.

complaint with the agreement was its provision for full retroactive "occupational seniority" for those flight attendants seeking reinstatement. Since occupational seniority is used under the collective bargaining agreement as the basis for determining many working conditions, *e.g.*, choice of bases and order of lay-off, intervenor argued that the granting of this relief would be an onerous burden on the incumbent employees. After the intervenor's argument, the court stated that "the equities are on the side of approving the settlement agreement. . . . I think it is the best and most equitable result we can achieve in the case." Subsequently, the court entered an order approving the settlement agreement and providing for the restoration to those plaintiffs requesting reinstatement of their accrued occupational seniority from the time of their discharge. Intervenor appeals that judgment.

II

Intervenor initially argues, relying on *United Airlines, Inc. v. Evans*, 431 U.S. 553 (1977), that the district court erred in not requiring each plaintiff to demonstrate that her claim is not time barred under 42 U.S.C. § 2000e-5(d) (1970).[6] Intervenor also argues, relying on *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), that the district court erred in not requiring each plaintiff to prove that she would have continued in employment in the years between her pregnancy and the settlement but

[6]Prior to the 1972 amendments to Title VII, the Act provided that "[a] charge . . . shall be filed within ninety days after the alleged unlawful employment practice occurred. . . ." 78 Stat. 260. The amendments added a new subsection (a) to § 706. Consequently, subsection (d) was redesignated as subsection (e). At the same time, it was amended to enlarge the limitations period to 180 days. 42 U.S.C. § 2000e-5(e).

for the defendant's wrongful termination. While we believe that in a controverted Title VII case the issues raised by intervenor would be both difficult and interesting, we must recognize that we are here reviewing the propriety of a settlement and not a judgment rendered after a trial. We believe that the issues raised by the intervenor should not be decided on the basis of Title VII law, but rather must be decided on the basis of legal principles regulating judicial review of settlement agreements. Relying on those principles, we conclude that the district court correctly declined to decide those issues relevant to the merits of the plaintiffs' claims prior to deciding merely whether the settlement agreement was appropriate.

It is a well-settled principle that the law generally favors the encouragement of settlements. *See Florida Trailer & Equipment Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). That general rule has been recognized as applicable to settlements in Title VII cases. *Patterson v. Newspaper & Mail Deliverers Union of N.Y. & Vicinity*, 514 F.2d 767, 771 (2d Cir. 1975), *cert. denied sub nom. Larkin v. Patterson*, 427 U.S. 911 (1976). In fact, one court has concluded that it is "the clearly expressed intent of that Act to encourage settlements." *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975), *cert. denied*, 424 U.S. 967 (1976). *See also Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

In addition, it is generally recognized that settlements are entered into because of "the very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation and expense. . . ." *Florida Trailer & Equipment Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). Based on these considerations, this court

has held that a district court in reviewing a settlement agreement "should not attempt to decide the merits of the controversy . . . [because] [a]ny virtue which may reside in a compromise is based upon doing away with the effect of such a decision." *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976). *See generally* Note, *Factors Considered in Determining the Fairness of a Settlement*, 68 NW. U.L. REV. 1146, 1154 (1974).

Applying these general principles to this case, we believe the district court correctly declined to decide the merits of each of the plaintiffs' claims. Intervenors essentially ask this court to require in excess of 100 mini-trials on issues dealing with the adequacy of each plaintiff's complaint and the availability of defenses. It seems to us beyond serious dispute that no reasonable parties are going to settle any case if an intervenor can force them to litigate separately the merits of each claim. The rule urged by the intervenor would most seriously discourage efforts to settle Title VII cases, and we refuse to sanction such a result.

The only argument that intervenor offers to support a contrary result is that the district court had a duty to consider the interests of the incumbent employees before approving the settlement. *See Mandujanao v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *Alaniz v. California Processors, Inc.*, 73 F.R.D. 289, 293 (N.D. Cal. 1976). We have no quarrel with that general proposition, but it certainly does not lead to the conclusion that the court had a duty to litigate the merits of the plaintiffs' claims prior to approving the settlement. At most the court was required to permit APFA to intervene and offer it an opportunity to present to the court is members' interests in the proposed remedy. This intervenor had an opportunity to do. The district court was required to do no more. *See EEOC v. American Tel. & Tel. Co.*, 556 F.2d 167, 173 (3d Cir. 1977) (interests of a third party in a consent decree limited to appropriateness of the remedy).

III

Intervenor's final argument is that the district court abused its discretion by approving this settlement without sufficiently apprising itself of the facts as to the settlement's impact on the incumbent employees. To evaluate this contention, we must focus in some detail on what transpired at the settlement approval hearing.

At the beginning of the hearing, the court recognized explicitly the importance of having the APFA's members' interests represented and thus permitted the union to intervene. Then, the court acknowledged that the intervenor had witnesses available and, although it did not encourage having them testify, it seems clear from the record that the court was willing to permit intervenor to make an offer of proof. Intervenor's counsel, in turn, stated that "[i]f we can avoid it, I think we would be better off . . ." (Tr. at 3).

The district court then permtted both sides to argue as to the likely effect of this agreement on the incumbent employees. It was established that the parties' best estimate was that at most 150 flight attendants[7]

[7]Intervenor makes much of the fact that this number was merely an estimate. We find that fact to be of little significance. First, intervenor does not suggest that subsequent events have shown the estimate to be substantially incorrect. Second, even if all the class members sought reinstatement, the number would still be less than 300. Intervenor did not argue before the district court nor before this court that any undue burden would attend the infusion of even that many new employees into the present work force.

would seek reinstatement and that there were about 5000 incumbent flight attendants. Thus, the numerical impact of the agreement appeared to be minimal. In addition, the court was told that a flight attendant "who wishes to go back to work will only be assigned to a base when there is an opening in that base and the people will be assigned to that base over a rather lengthy period of time . . ." (Tr. at 7-8). The court finally was informed that no incumbent flight attendant would lose his or her job as a result of the agreement (Tr. at 7). Based on these considerations, the court decided that the settlement was fair and that it should be approved.

In assessing that conclusion, we should make clear at the outset what legal standard should guide a district court's determination of whether this remedy is appropriate in the face of a challenge by incumbent employees. We believe that in this type of a settlement case, the Supreme Court's standard as to the appropriateness of "competitive status"[8] seniority announced in *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976), applies with full force.[9] *Cf. United*

[8]"Competitive status" seniority as described in *Franks* is the equivalent of "occupational" seniority as used in defendant's collective bargaining agreement with intervenor.

[9]We do not decide the extent to which *Franks* should be used as a guide in a traditional settlement case where there are dissident members of a class of discriminatees. It may well be that the minority members of the class will have to forego the full retroactive competitive seniority provided in *Franks* so that the majority may acquire some benefits and yet avoid the costs and uncertainties of litigation. Such a decision would have to be made on a case-by-case basis.

Here, however, we deal with a case where settlement was reached subsequent to the entering of summary judgment against the defendant. The plaintiffs have almost earned through full litigation the remedy proposed in *Franks* and adopted in this settlement. The only impediment to that remedy here is the

States v. Trucking Employers, Inc., 561 F.2d 313, 317 n.15 (D.C. Cir. 1977). In *Franks*, the Court held:

> [D]istrict courts should take as their starting point the *presumption* in favor of rightful-place seniority relief, and proceed with further legal analysis from that point; and that such relief may not be denied on the abstract basis of adverse impact upon interests of other employees but rather only on the basis of *unusual adverse impact arising from facts and circumstances that would not be generally found in Title VII cases.*

424 U.S. at 779 n.41 (emphasis added). Thus, contrary to intervenor's contention that the burden at the hearing was somehow on the district court to determine on some abstract basis the fairness of the settlement, we conclude that the burden was on the intervenor to demonstrate some "unusual adverse impact" that justified not permitting full retroactive seniority.

Examining the district court's action in light of this standard, we find that there was clearly no abuse of discretion. First intervenor declined to make any evidentiary showing at the hearing of an "unusual adverse impact" that this relief would create. In fact, intervenor in the arguments made to this court has still not suggested in anything more than conclusory statements how this settlement will unduly disadvantage the incumbent employees who might not even be employed but for the injury done to the plaintiffs.

intervenor's complaint. The interests of the intervenor's members are identical to those of the incumbent employees in *Franks* that were given such little weight by the Supreme Court. The fact that this case was settled rather than fully litigated is of no consequence to the appropriateness of applying *Franks* as the basis for guiding the district court's discretion.

Second, the district court made an admirable effort to sort out the likely impact of and the "balance of equities" surrounding the provision of retroactive occupational seniority. It assured itself that no present employees would lose their positions because of this agreement and also that the number of returning employees was not so large as to create undue problems. On the record before us, we find not the slightest basis for concluding that the court abused its discretion.

For these reasons, we believe that the district court's judgment approving the settlement agreement must be AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B.

Affidavit of Colleen Brenner.

State of California, County of Los Angeles—ss.

COLLEEN BRENNER, being first duly sworn deposes and says:

I am a National Officer of the Association of Professional Flight Attendants, a labor organization. My official title is Division Representative, Eastern Division 1. By virtue of holding this office I am also a member of the Board of Directors of the Association of Professional Flight Attendants. I have held this position since May 16, 1977 when APFA was certified by the National Mediation Board as the collective representative of flight attendants employed by American Airlines, Inc.

Prior to May 16, 1977 and since March, 1962 I have been employed as a flight attendant by American Airlines, Inc. During that period I have been a member of Transport Workers' Union Local 550, AFL-CIO and its successor Transport Workers' Union Local 552, AFL-CIO. For the period between 1962 and May, 1977 I have held various offices in either Local 550 or Local 552. I have been chairperson of the Los Angeles base on behalf of Local 552, have been a member of the Executive Board of Local 552, I have been on the negotiating committee of Local 552.

As a result of my membership in the two TWU locals, Locals 550 and 552 and the various offices I have held in said locals, I have personal knowledge and am familiar with the history of the negotiations and agreements between American Airlines, Inc. and the various locals that have represented flight attendants employed by American Airlines, Inc.

On October 9, 1970, Local 550, TWU, AFL-CIO and American Airlines, Inc. entered into a letter of agreement dealing with the question of stewardesses who become pregnant. This letter of agreement became a part of the general collective bargaining agreement and was attached thereto. The letter of agreement dated October 9, 1970 between American Airlines, Inc. and Local 550, TWU, AFL-CIO is attached hereto and marked Exhibit "A".

Following the above-referred to letter of agreement chronologically the next general agreement entered into between American Airlines, Inc. and Transport Workers' Union Local 552 (which succeeded Local 550 as the representative of flight attendants employed by American Airlines, Inc.) was an agreement which became effective May 27, 1974. In the agreement of May 27, 1974 there was a section entitled "Article 16—Leaves of Absence". This Article 16 dealt with the question of stewardesses who became pregnant beginning at sub-paragraph (d)(1). The provisions of this section are attached hereto and marked Exhibit "B".

Also attached to the agreement of May 27, 1974 was a letter of agreement referred to as "Appendix L" dated May 27, 1974. This supplemental letter of agreement referred to in the contract as "Appendix L" is attached hereto in its entirety and is marked Exhibit "C".

The above-referred to documents set forth in its entirety the provisions of the collective bargaining agreement between the TWU locals and American Airlines, Inc. except for the current agreement which contains language dealing with stewardesses who become pregnant and their rights and obligations and the terms and provisions of the current agreement are fully set forth in the Memorandum of Points and Authorities in Support of Motion to Intervene filed on behalf of APFA concurrently herewith.

I swear under penalty of perjury that the foregoing is true and correct.

Signed at Los Angeles, California, September 14, 1977.

/s/ Colleen Brenner
COLLEEN BRENNER

Subscribed and sworn to before me this 14th day of September, 1977.

/s/ Harriette E. Terry
Notary Public in and for said County and State.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of June, A.D. 1978.

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